

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Time Warner Entertainment/Advance Newhouse)	
Partnership d/b/a Time Warner Cable)	CSR-6029-A
)	
For Modification of Television Market of)	
Television Station KDOC-TV, Anaheim,)	
California)	

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2003

Released: March 19, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner Cable ("Time Warner") filed the captioned petition which seeks to exclude from the market of television station KDOC-TV, Channel 56, Anaheim, California, the city of Barstow, the nearby Marine Corps Logistics Base, and adjacent unincorporated areas of San Bernardino County, California known as Daggett, Kinkley, Lenwood and Yermo (the "Communities") served by Time Warner's cable systems. Golden Orange Broadcasting Co., Inc. ("Golden"), licensee of KDOC-TV, filed comments on the petition, and Time Warner filed a reply. Golden also filed a supplement to its comments. For the reasons stated below, we grant the petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order"); 47 C.F.R. §76.55(e).

viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁴

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁵

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas which they serve and which form their economic market.

³For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁴47 U.S.C. §534(h)(1)(C).

⁵*Id.*

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁶

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁷

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system head end locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system head ends and communities in relating to the service areas.

Note to paragraph [2]: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁸

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

⁶H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁷*Must Carry Order*, 8 FCC Rcd at 2977 n. 139.

⁸The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.⁹

5. Petitions to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

6. Station KDOC-TV is located in the Los Angeles, California DMA as are the Communities served by Time Warner's cable systems at issue. Time Warner requests that the Commission modify KDOC-TV's television market by excluding the Communities served by the Time Warner's cable systems from KDOC-TV's television market. In support of this request, Time Warner provided evidence that KDOC-TV has never been carried on these cable systems, is geographically distant from the cable systems, provides a Grade B signal over none of the Communities, doesn't broadcast programming of specific interest or impact to residents of the Communities, and achieves no measurable viewing audience in the counties where the cable systems are located.¹⁰ Time Warner also provided information showing that the distances from Anaheim, California, KDOC-TV's community of license, to the Communities range from 84 to 95 miles.¹¹ Time Warner asserts that its cable systems carry local television stations that provide coverage of news, sporting events and issues of concern to the Communities its cable systems serve.¹² Time Warner asserts further that the San Gabriel Mountains and the San Bernardino National Forest are situated between KDOC-TV's transmitter site in Los Angeles County and the Communities its cable systems serve, effectively shielding those Communities from off-the-air reception of Los Angeles television broadcast stations.¹³ Finally, Time Warner argues that a television station is not guaranteed the right to carriage throughout its DMA, and that the Commission has in many instances granted market modification petitions in circumstances relevant to the Section 614(h) statutory market modification factors virtually identical to those presented by this petition.¹⁴

7. Golden presented no evidence relevant to these market modification factors in rebuttal of the evidence presented by Time Warner. Instead, Golden conceded that KDOC-TV is not able to deliver a good quality signal to the headend of Time Warner's cable systems serving the Communities. Golden further stated that it has made no demand for carriage of the station's signal on those systems, and that Time Warner accordingly is under no obligation to carry KDOC-TV. Golden argued that under these

⁹47 C.F.R. §76.59(b).

¹⁰Petition at 5-9.

¹¹*Id.* at 2-3.

¹²*Id.* at 9-10.

¹³*Id.* at 3, 11.

¹⁴*Id.* at 11.

circumstances the petition is premature and should be dismissed, because no current case or controversy exists regarding carriage of KDOC-TV.

8. Section 614(h) of the Communications Act includes no provision indicating that a must carry request, or a controversy regarding a must carry request, is a prerequisite for the filing of a market modification petition pursuant to that statutory provision. Accordingly, we reject Golden's suggestion that the instant petition is premature and should be dismissed because no request for carriage of KDOC-TV on Time Warner's cable systems serving the Communities has been made. Instead, we are obliged to consider the evidence of record relevant to the four statutory market modification factors set forth in Section 614(h).

9. Section 614(h)(1)(C) of the Communications Act authorizes the Commission to include or exclude particular communities from a television station's market for the purpose of ensuring that a television station is carried in the areas which it serves and which form its economic market. Section 614(h)(1)(C)(i) specifically and unambiguously directs the Commission, in considering requests for market modification, to afford particular attention to the value of localism. As noted above, Time Warner presented evidence, not challenged by Golden, that KDOC-TV is a commercial television station licensed to operate on Channel 56 at Anaheim, California within the Los Angeles DMA. Anaheim is located approximately 84 miles from Lenwood, California, the nearest Community served by Time Warner, and approximately 95 miles from Yermo, the more distant of those Communities. Although these Communities are also in the Los Angeles DMA and KDOC-TV has been operating since October 1982, the station has garnered no cable carriage in the Communities. Nor does KDOC-TV provide a Grade B or better signal over any of those Communities. The distances involved and absence of any KDOC-TV Grade B signal over the Communities dispels any suggestion that Time Warner's cable systems have served as a bottleneck denying KDOC-TV access to the Communities at issue. These factors also tend to explain the history of non-carriage of the station in those Communities, and strongly indicate that the Communities served by Time Warner are too distant to form part of KDOC-TV's television market. Based on the record before us, we conclude that KDOC-TV's television market does not include, and that the station does not serve, the Communities. We therefore grant Time Warner's petition.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended,¹⁵ that the petition for special relief filed on behalf of Time Warner Entertainment/Advance Newhouse Partnership d/b/a Time Warner Cable **IS GRANTED**, and the city of Barstow, the Marine Corps Logistics Base, and adjacent unincorporated areas of San Bernardino County, California known as Daggett, Kinkley, Lenwood and Yermo **ARE HEREBY EXCLUDED** from the television market of television station KDOC-TV, Anaheim, California.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ 47 U.S.C. § 534(h) and 47 C.F.R. § 76.59.

¹⁶ 47 C.F.R. § 0.283.